



MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
LABOR STANDARDS BUREAU
WAGE AND HOUR UNIT

FREQUENTLY ASKED QUESTIONS

THE FOLLOWING ARE FREQUENTLY ASKED QUESTIONS AND ANSWERS. ANSWERS MAY BE DIFFERENT DEPENDING ON THE EMPLOYMENT CONTRACT AND/OR THE PRESENCE OF A COLLECTIVE BARGAINING AGREEMENT. IN NO CASE MAY SUCH CONTRACTS OR AGREEMENTS PROVIDE LESS THAN PROVIDED BY THE LAWS THAT APPLY.

Minimum Wage

Q. What is the minimum wage?

- A.** It is currently \$5.15 per hour (effective September 1, 1997). A business not covered by the Fair Labor Standards Act whose gross annual sales are \$110,000 or less may pay \$4.00 per hour. **However,** if an individual employee of such a business is producing or moving goods between states or is otherwise covered by the Fair Labor Standards Act, that employee must be paid federal minimum wage (currently \$5.15 per hour).

Although there are some exemptions, most workers must be paid the minimum wage for all "hours worked" as required by state law. "Hours worked" includes preparation time, opening and closing the business, company travel, and required meetings and training. Any time spent by an employee in the performance of these duties must be recorded and paid.

Employers may not use tips as credit toward wage rates, including minimum wage, to an employee.

For information on minimum wage exemptions, call the Department of Labor and Industry at 406-444-5600.

Pay Requirements

Q. How soon after termination of employment must an employer pay wages?

- A.** When an employee is laid off or discharged, all wages are due immediately (within four hours or end of the business day, whichever occurs first), unless the employer has a preexisting, written policy that extends the time for payment in which case, the wages may not be

delayed beyond the next payday for the period in which the separation occurred, or 15 calendar days, whichever occurs first.

Q. How soon after an employee quits, must an employer pay wages?

A. When an employee quits, wages are due on the next scheduled payday for the period in which the employee was separated, or 15 calendar days, whichever occurs first.

Q. How soon does an employer need to pay wages while still employed?

A. An employee must be paid within 10 business days after the end of the pay period.

Q. I didn't get my final paycheck. What can I do?

A. The first thing to do is ask the employer why you haven't received your final check. If the employer refuses to give you your final check, you may choose one of the three options to obtain your wages:

- Obtain the services of a private attorney,
- File a claim in court,
- File a wage claim with Wage and Hour

The wage claim form for filing with Wage and Hour is available at any of the Workforce Centers (formerly known as Job Service), or you can download the claim here <http://erd.dli.state.mt.us/laborstandard/lswagehrlawsfiling.asp>

Read the information provided with the form, fill it out and return it to Wage and Hour Unit, our address is on the top of the form.

SIGNATURES MUST BE NOTARIZED FOR THE CLAIM TO BE PROCESSED.

Q. Is there a limit to the number of hours an employer can require you to work?

A. The employer can work an employee as long as they feel it is necessary for the job that they are doing. (See "Overtime Pay" section for information about working more than 40 hours in a week).

There are also certain job positions that may limit the number of hours an employee can work during the day. For a list of these positions please contact the Department of Labor and Industry at 406-444-5600.

Q. Are pay raises mandated by law?

A. The law does not require an employer to provide pay raises. If provided they become a part of the employment contract. If a raise is due and not received, the discrepancy should be addressed immediately as

acceptance of the wage paid may be seen as an alteration of the original agreement.

An employer must pay the agreed wage until such time that a new rate is agreed upon. Once you and the employer have specifically discussed and agreed upon a new rate, it is considered the “agreed wage.” Wage and Hour does not have jurisdiction over promised raises. A raise is at the discretion of the employer.

Q. Can an employer cut an employee’s rate of pay?

A. Yes. State and federal laws only require that an employer pay an employee at least the applicable minimum wage in non-overtime workweeks to non-exempt employees. Reductions in pay are acceptable, but they cannot be made retroactively. The employer needs to give the employee notice and tell them from this day forward this is what the new rate of pay is going to be.

Q. Can a supervisor change the hours recorded on a timecard?

A. Employers must maintain accurate records. It is not legal for a supervisor to change your timecard if you have worked the hours actually reported on the time card. If you suspect this is happening, you need to bring it up, ask to be paid for all hours worked, and keep personal records so you can verify your work hours. If the problem continues, you may file a complaint with Wage and Hour, or if you quit the job and weren’t paid for all hours worked, you may file a claim.

Termination of Employment

Q. Can an employer withhold a final paycheck until an employee turns in keys or uniforms, etc.?

A. Legally, no, an employer may not withhold a final check. However, in order to avoid disputes or disruptions in pay, workers are advised to turn in keys, uniforms, tools and equipment upon termination.

Q. I was fired from my job for no good reason. Is that legal?

A. No. Montana is not an “at will” state. In some instances, the Wrongful Discharge From Employment Act does not apply, but generally, once an employee has completed the established probationary period, the employer needs to have good cause for termination.

THE WRONGFUL DISCHARGE FROM EMPLOYMENT ACT IS NOT ADMINISTERED BY ANY STATE AGENCY. Individuals who feel aggrieved by their termination must seek civil redress through the courts. Persons who believe they were fired as a result of unlawful discrimination, may contact the Human Rights Bureau at 1-800-542-0807 or 406-444-

2884 or the U. S. Equal Employment Opportunity Commission. For a toll free connection to the nearest EEOC office, call 1-800-669-4000.

Q. I suspect that my former employer is giving bad references about me. What recourse do I have?

A. Blacklisting is prohibited in the state of Montana. If any company or corporation in this state authorizes or allows any of its agents to blacklist or any person does blacklist any discharged employee or attempts by word or writing or any other means whatever to prevent any discharged employee or any employee who may have voluntarily left the company's service from obtaining employment with another person, except as provided in 39-2-802 M.C.A., such company or corporation is liable in punitive damages to such employee so prevented from obtaining employment, to be recovered by him in a civil action, and may also be punishable as provided in 39-2-804 M.C.A.

Overtime Pay

Q. When is overtime pay required?

A. Most employees are entitled to be paid time and one-half their regular rate of pay for any time worked over 40 hours in the employer's seven-day workweek. Even though the total hours (work hours plus holiday, vacation or sick) for the week might exceed 40, overtime pay is not required unless an employee actually worked more than 40 hours. There are certain exceptions, however. Agricultural workers are generally exempt from overtime. Executives, administrative, and professionals who are paid on a salary basis are exempt from overtime as are outside sales persons. (Salaried workers who do not meet the definition of executive, administrative, or professional must be paid overtime in addition to their salary.) The definitions of these can be located here at this website:
<http://erd.dli.state.mt.us/laborstandard/wagehrlaws.asp>

Please contact Wage and Hour at 406-444-5600 for more information on the exceptions from overtime or our website at
<http://erd.dli.state.mt.us/laborstandard/wagehrlawsexempt.asp>

Q. Can an employer make employees work more than their scheduled shift?

A. An employer may order an employee to work more time than their scheduled shift and may discipline or terminate employment of employees who do not perform assigned duties.

Holiday, Vacation, Sick and Severance Pay

Q. Is an employer required to pay time and one-half for working on a holiday?

A. Overtime or premium pay is not required for working on holidays or weekends unless those hours are in excess of 40 for the workweek. Holiday pay is a benefit that may be paid at the employer's discretion. Overtime is based on actual hours worked, absent practice or contract. Even though the total hours (work hours plus holiday, vacation, or sick pay) for the week might exceed 40, overtime pay is not required unless an employee actually worked more than 40 hours.

Q. Does an employer need to pay out vacation upon termination of employment?

A. There is no requirement in state or federal law that requires private sector employers to provide vacation pay. However, if provided, once vacation has been earned according to the employer's policy, it is then considered wages and is due and payable in the same manner as regular wages. So called 'use it or lose it' policies are not permitted in Montana. However, caps, or maximum accumulation amounts can be instituted which effectively prevent additional vacation to accrue until existing time is utilized. If you feel that you are entitled to this benefit upon termination, you can file a claim with Wage and Hour or pursue it through small claims court or a private attorney.

Q. Is an employer required to be pay for unused sick leave, paid time off (pto) or severance pay?

A. Private sector employers are not required to pay out severance pay, sick leave or paid time off (pto). These are considered benefits and may be paid based on the employer's policies. There is no requirement in state law to provide these benefits. In the case of pto's there is no Montana case law indicating if pto's must be paid on separation. The Department takes the position that pto's are not payable except for those parts of the pto clearly identifiable as earned vacation time.

Payroll Deductions

Q. What type of deductions can an employer make from a paycheck?

A. In general, deductions from wages are lawful only under the following conditions:

- The employer is required to do so by law – for example, federal and state taxes, Social Security, or a garnishment order
- The employee has authorized in writing and the deduction is for the employee's benefit.

Employers must furnish itemized pay statements to each employee at the time of payment of wages showing all deductions for the pay period. If the

employee has no deductions, the employer still needs to give a statement to the employee.

Q. Can the employer make me pay for a vase that I accidentally dropped? Can the employer also make me pay for any shortages from my cash till?

A. The employer cannot withhold wages or make an employee pay for damages, mistakes or shortages.

Show-up Pay

Q. If I report to work and my employer sends me home because of lack of work, must I be paid for showing up for work?

A. There is no requirement for “show-up” pay. Employees must be paid for actual time worked.

Rest and Meal Periods

Q. What are the rest-break and meal-period requirements?

A. There is no state or federal law that requires an employer to give a break (rest periods or coffee breaks) or a meal period. This is a benefit that the employer may choose to provide. However, if a break is offered, the break time is considered as paid time. In the case of meal periods, they are not considered paid time if the meal period is half an hour or longer and the employee is completely relieved from duty.

Employment Records

Q. Are personnel records considered the employee’s or the employer’s property?

A. Personnel files are generally considered the property of the employer and therefore it would be at the employer’s discretion to give the employees copies.

Minors in the Workplace

For information, go to the Montana Child Labor website at <http://erd.dli.state.mt.us/laborstandard/wagehrchild.asp>

For more information

If you have a question not answered here, you may e-mail the question to asmith@state.mt.us or pmcdaniel@state.mt.us or call Wage and Hour at 406-444-5600.